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CLINIC's Lolita Brayman and Victoria Neilson 2017 → 2019 Analysis

Credible Fear Lesson Plans Comparison Chart: 2006 → 2014 → 2017 → 2019

Major Changes Introduced in:

➤ February 2014 Lesson Plan:

- Removes language on function of credible fear as a low-threshold screening
- Clarifies “significant possibility” standard: applicant must demonstrate “substantial and realistic possibility of succeeding” and cautions against “minimal or mere possibility”
- Modifies guidance on credible fear of torture screenings to require consideration of all elements of CAT definition
- Adds instructions to consider internal relocation

➤ February 2017 Lesson Plan:

- Removes language stating an individual should be found credible if there is a “significant possibility that the assertions underlying the applicant’s claim could be found credible in a full asylum or withholding of removal hearing”
- Requires applicant to establish identity “by a preponderance of the evidence”
- Further deemphasizes the function of credible fear as an initial screening

➤ April 2019 Lesson Plan:

- Officer may require applicant to provide country conditions materials
- Increased references to DOS Human Rights reports as means to check country conditions information.
- Eliminates language that officer should consider the impact of cross-cultural issues, trauma, and the effects of detention, on credibility assessments, as well as other previously listed factors which might explain or mitigate inconsistencies
- Eliminates text imposing on officer an “affirmative duty to elicit all information relevant to the nexus determination”
- If applicant has established past persecution but not well-founded fear of future persecution, applicant must meet humanitarian asylum standard
- Officer must consider internal relocation options and assess COI materials to determine if internal relocation is reasonable
- Analyzes *Cardoza-Fonseca*, implying that well-founded fear threshold may actually be higher than 10% because facts in that case were unusual

- References *Grace v. Whitaker* throughout with standards to be used while injunction is in effect and standards to be used if injunction is lifted (implying belief that injunction was wrongly issued)
- States that while *Grace* injunction is under effect, PSG analysis should only be *Acosta* immutability, not three-prong test
- Adds text from *A-B-* that for private actor harm, “the government must have abdicated its responsibility to control persecution”
- Adds requirement to consider internal relocation as part of “reasonableness” test for CAT screening
- Explicitly states that there is no general presumption against specific types of claims and explicitly states that the applicant does not have to delineate the PSG. (No reference to this changing if *Grace* injunction is lifted)

Lesson Plan Overview

<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
		<p>- In the Lesson Plan Overview (page 1), the 2014 plan is titled “Credible Fear” while 2017 plan is titled “Credible Fear of Persecution and Torture Determinations”</p> <p>- “Terminal Performance Objective” → 2017 plan adds “statutory provisions” to the list of authorities governing whether an applicant has established a credible fear. Also reorders the authorities to list statutory provisions and regulations before policies and procedures.</p> <p>- “Background Reading” → adds two additional documents related to eliminating the exception to expedited removal for Cuban nationals</p>	<p>→ (page 1) In the Lesson Plan Overview:</p> <p>→ “Lesson Description” → 2019 plan eliminates “using the credible fear standard” at end of the sentence.</p> <p>→ “Student Materials/References” → 2019 plan adds to list “INA § 241(b)(3); 8 C.F.R. § 1.2”</p> <p>→ (page 2) “Background Reading” → eliminates background materials from lesson plan:</p> <ul style="list-style-type: none"> - Bo Cooper, <i>Procedures for Expedited Removal and Asylum Screening under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996</i>, 29 CONN. L. REV. 150 I, 1503 (1997). - U.S. Committee on International Religious Freedom, <i>Study on Asylum Seekers in Expedited Removal - Report on Credible Fear Determinations</i>, (February 2005). - Customs and Border Protection, <i>Treatment of Cuban Asylum Seekers at Land Border Ports of Entry</i>, Memorandum for Directors, Field Operations, (Washington, DC: 10 June 2005). - Joseph E. Langlois, Asylum Division, Office of International Affairs, <i>Increase of Quality Assurance Review for Positive Credible Fear Determinations and Release of Updated Asylum Officer Basic Training Course Lesson Plan, Credible Fear of Persecution and Torture Determinations</i>, Memorandum to Asylum Office Directors, et al. (Washington, DC: 17 April 2006).

			<p>- Joseph E. Langlois, Asylum Division, Refugee, Asylum and International Operations Directorate, <i>Revised Credible Fear Quality Assurance Review Categories and Procedures</i>, Memorandum to Asylum Office Directors, et al. (Washington, DC: 23 December 2008).</p> <p>→ Adds background material: H. Rept. No. 109-72 at 161-68 (2005)</p> <p>→ (page 3) “Critical Tasks” → adds: Skill in assessing credibility of aliens in credible fear interviews (4)</p> <p>→ (page 4) “Table of Contents” → eliminates historical background section.</p> <p>→ Adds to Section X “Other Issues”: - Part D – No General Presumptions Against Certain Types of Cases; and - Part E – Identity of Torturer.</p>
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Background

<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
<p>- Basic info and history of expedited removal and CFI. Aliens subject to and exempt from expedited removal.</p> <p>- Parole: mandatory detention through CFI, then discretion after positive CFI.</p>	<p>- Same information, but more emphasis on removability.</p> <p>- More statutory and regulatory references.</p> <p>- Parole: discusses urgent parole during expedited removal (ER) and post-positive CFI; but only discusses criteria for parole during ER (medical urgency or law enforcement need); implies same criteria and does not explain prosecutorial discretion factors for post-CFI</p>	<p>- Cubans eliminated as an “exemption” to expedited removal (with citations to the federal register) (pp. 7-9)</p> <p>- Adds explanation / background about 1/17/17 DHS notice to apply expanded ER to Cuban nationals (p. 12)</p> <p>- Reference to ICE’s discretion to parole someone out of detention following a positive credible fear finding eliminated (p. 12)</p>	<p>→ (2nd paragraph) Adds text “in which case they are referred to an asylum officer to determine whether they have a credible fear of persecution or torture” after description of being placed into expedited removal.</p> <p>→ Adds citation to Illegal Reform and Immigrant Responsibility Act of 1996 (Pub. L. No. 104-208, 110 Stat. 3009, Sept. 30, 1996).</p> <p>→ (4th paragraph) Adds text concerning - withholding of removal under section 241(b)(3) of the INA.</p>

Function of Credible Fear Screening

<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
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<p>- Congressional intent: “low screening standard for admission into the usual full asylum process, and provide assurance against <i>refoulement</i>. - “Net” to capture all potential refugees - DOJ statement at CFI implementing regulations: “low threshold of proof of potential entitlement to asylum; many aliens who have passed the CF standard will not ultimately be granted asylum.” - Purpose: ensure access to full hearing</p>	<p>- Removes all references to Congressional intent, and DOJ intent at CF implementing regulations - Removes language on function as a net or low threshold/screening standard - Adds DOJ CAT implementing language: “quickly identify potentially meritorious claims and resolve frivolous ones with dispatch” - Adds language from law review article on threshold requiring holding sufficient “promise”</p>	<p>- No changes.</p>	<p>→ eliminates all <u>historical background</u> on credible fear screenings</p> <p>→ Eliminates text: - If an alien passes this threshold-screening standard, his or her claim for protection ... will be further examined by an immigration judge in the context of removal proceedings under section 240 of the Act. The screening mechanism also allows for the expeditious review by an immigration judge of a negative screening determination and the quick removal of an alien with no credible claim to protection.” - Essentially, the asylum officer is applying a threshold screening standard to decide whether an asylum [or torture] claim holds enough promise that it should be heard through the regular, full process or whether, instead, the person's removal should be effected through the expedited process. - Bo Cooper, <i>Procedures for Expedited Removal and Asylum Screening under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996</i>, 29 CONN. L. REV. 1501, 1503 (1997).</p>
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Definition of Credible Fear of Persecution and Credible Fear of Torture

<p><i>2006 Lesson Plan</i></p>	<p><i>2014 Lesson Plan</i></p>	<p><i>2017 Lesson Plan</i></p>	<p><i>2019 Lesson Plan</i></p>
<p>- Persecution: INA § 235(b)(1)(B)(v) - Torture: 8 C.F.R. § 208.30(e)(3)</p>	<p>Same</p>	<p>- No changes.</p>	<p>→ Prior text “Definition of Credible Fear of Persecution”</p> <p>Adds- Regulations further provide that the applicant will be found to have a credible fear of persecution if the applicant establishes that there is a significant possibility that he or she can establish eligibility for withholding of removal under section 241(b)(3) of the INA. - C.F.R. § 208.30(e)(2)</p> <p>→ Prior text “Definition of Credible Fear of Torture” → adds text (changes in bold): - Regulations provide that the applicant will be found to have a credible fear of torture if the applicant establishes that there is a significant possibility that he or she is eligible for withholding of removal under section 241(b)(3) of the Act or deferral of removal, under the Convention Against Torture, pursuant to 8 C.F.R. § 208.16 or § 208.17 if the applicant is subject to a mandatory bar to withholding of removal under the regulations issued pursuant to the legislation implementing the Convention Against Torture. - Adds cite: C.F.R. § 208.16; 8 C.F.R. § 208.17</p>

Burden of Proof

<p><i>2006 Lesson Plan</i></p>	<p><i>2014 Lesson Plan</i></p>	<p><i>2017 Lesson Plan</i></p>	<p><i>2019 Lesson Plan</i></p>
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<p>- “Significant possibility” (SP) must be applied in conjunction w/standard for ultimate determination</p>	<p>- “Significant possibility” must be applied in conjunction w/standard for ultimate determination</p>	<p>- No changes.</p>	<p>→ (page 10) “A. Burden of Proof / Testimony as Evidence”:</p> <p>→ Eliminates text:</p> <ul style="list-style-type: none"> - Because of the non-adversarial nature of credible fear interviews, while the burden is always on the applicant to establish eligibility, there is a shared aspect of that burden in which asylum officers have an affirmative duty to elicit all information relevant to the legal determination. The burden is on the applicant to establish a credible fear, but asylum officers must fully develop the record to support a legally sufficient determination. <p>→ Replaces with text:</p> <ul style="list-style-type: none"> - Asylum officers are required by regulation to “conduct the interview in a nonadversarial manner.” The regulation also instructs asylum officers that “[t]he purpose of the [credible fear] interview shall be to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture...” <p>→ Adds cite: <i>Matter of A-B-</i>, 27 I&N Dec. 316, 340 (AG 2018); C.F.R. § 208.30(d)</p>
<p>- Claim with “minimal or mere possibility” does not meet standard of proof (SOP)</p>	<p>- Claim with “minimal or mere possibility” does not meet SOP</p>	<p>- No changes.</p>	<p>→ Eliminates text:</p> <ul style="list-style-type: none"> - Oftentimes, in the credible fear context of expedited removal and detention, an applicant will not be able to provide additional evidence corroborating his or her otherwise credible testimony. An applicant may establish a credible fear with testimony alone if that testimony is detailed, consistent, and plausible. <p>→ Adds text (changes in bold):</p> <ul style="list-style-type: none"> - According to the INA, the applicant’s testimony may be sufficient to sustain the applicant’s burden of proof if it is “credible, is persuasive, and refers to specific facts efficient to demonstrate that the applicant is a refugee. An applicant is a refugee only if her or she has been persecuted or has a well-founded fear of persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion.” <p>- Adds cite: INA § 101(a)(42)</p> <p>→ Eliminates text:</p> <ul style="list-style-type: none"> - Therefore, the terms “persuasive” and “specific facts” must have independent meaning above and beyond the first term “credible.”
<p>- Does not require proof that harm is more likely than not</p>	<p>- Does not require proof that harm is more likely than not</p>	<p>- No changes.</p>	<p>→ Eliminates text:</p> <ul style="list-style-type: none"> - After developing a sufficient record by eliciting all relevant testimony, an asylum officer must analyze whether the applicant’s testimony is sufficiently credible, persuasive, and

	<p>- But more misleading here, when combined with emphasis on high standards</p>		<p>specific to be accorded sufficient evidentiary weight to meet the significant possibility standard.”</p> <p>→ Adds text:</p> <ul style="list-style-type: none"> - Under the INA, the asylum officer is also entitled to determine that the applicant must provide evidence that corroborates the applicant’s testimony, even where the officer might otherwise find the testimony credible. In cases in which the asylum officer determines that the applicant must provide the applicant notice and the opportunity to submit evidence, and the applicant must provide the evidence unless the applicant cannot reasonable obtain the evidence.” - Adds Cite: INA § 235(b)(1)(B)(v); 8 C.F.R. § 208.30(e)(2); <i>see</i> RAIO Training Module, Country Conditions Research. <p>→ Adds text:</p> <ul style="list-style-type: none"> - The regulations instruct asylum officers as follows: “in deciding whether the alien has a credible fear of persecution or torture pursuant to § 208.30 of this part,... the asylum officer may rely on material provide by the Department of State, other USCIS offices, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions. Thus in evaluating the credibility of an applicant’s claim to be a refugee, the asylum officer must consider information about the country from which the alien claims refugee status, such as the prevalence of torture or persecution based on race, religion, nationality, membership in a particular social group, or political opinion. Such information may be derived from several sources. - Adds cite: C.F.R. § 208.12(a)
<p>- Asylum Officer (AO) must consider whether applicant’s case presents “novel or unique issues” that merit consideration before IJ.</p>	<p>Must consider whether applicant’s case presents “novel or unique issues” that merit consideration before IJ.</p>	<p>- No changes.</p>	<p>→ (page 11) “B. Credible Fear Standard of Proof: Significant Possibility”:</p> <ul style="list-style-type: none"> - Eliminates text: When interim regulations were issued to implement the credible fear process, the Department of Justice described the credible fear "significant possibility" standard as one that sets "a low threshold of proof of potential entitlement to asylum; many aliens who have passed the credible fear standard will not ultimately be granted asylum." Nonetheless, in the initial regulations, the Department declined suggestions to "adopt regulatory language emphasizing that the credible fear standard is a low one and that cases of certain types should necessarily meet that standard." - Immigration and Naturalization Service, <i>Inspection and Expedited</i>

			<p><i>Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures</i>, 62 Fed. Reg. 10312, 10317-20 (Mar. 6, 1997).</p> <p>→ Eliminates text:</p> <ul style="list-style-type: none"> - While a mere possibility of success is insufficient to meet the credible fear standard, the "significant possibility" standard does not require the applicant to demonstrate that the chances of success are more likely than not." - See U.S. Committee on International Religious Freedom, <i>Study on Asylum Seekers in Expedited Removal - Report on Credible Fear Determinations</i>, pg. 170 (Feb. 2005); UNHCR, <i>A Thematic Compilation of Executive Committee Conclusions</i>, pp. 438-40, 6th Ed., June 2011. "Not manifestly unfounded" claims are (1) "not clearly fraudulent" and (2) "not related to the criteria for the granting of refugee status." 142 CONG. REC. H11071, H11081 (daily ed. Sept. 25, 1996) (statement of Rep. Hyde) (noting that the credible fear standard was "redrafted in the conference document to address fully concerns that the 'more probable than not' language in the original House version was too restrictive"). <p>→ Prior text (changes in bold):</p> <ul style="list-style-type: none"> - In sum, the credible fear "significant possibility" standard of proof can be best understood as requiring that the applicant 'demonstrate a <i>substantial and realistic possibility</i> of succeeding,' but not requiring the applicant to show that he or she is more likely than not going to succeed when before an immigration judge, or establishing eligibility for asylum, withholding of removal or deferral of removal. The standard requires the applicant to identify more than "significant evidence" that the applicant is a refugee entitled to asylum, withholding of removal, or deferral of removal, but the applicant does not need to show that the "preponderance" or majority of the evidence establishes that entitlement. <p>Joseph E. Langlois, Asylum Division, Office of International Affairs, <i>Increase of Quality Assurance Review for Positive Credible Fear Determinations and Release of Updated Asylum Officer Basic Training Course Lesson Plan, Credible Fear of Persecution and Torture Determinations</i>, Memorandum to Asylum Office Directors, et al. (Washington, DC: 17 April 2006).</p>
<p>- Does not make reference to correct well-founded fear (WFF) standard in <i>INS v. Cardoza-Fonseca</i></p>	<p>- Does not make reference to correct well-founded fear (WFF) standard in <i>INS v. Cardoza-Fonseca</i></p>	<p>- No changes.</p>	

	<p>- Paragraph 3, p. 16 → “When there is reasonable doubt regarding the outcome of a credible fear determination, the applicant likely merits a positive credible fear determination. The questions at issue can be addressed in a full hearing before an immigration judge.”</p>	<p>- “Important Considerations in Interpreting and Applying the Standard” → uses language “including when there is reasonable doubt regarding the outcome of a credible fear determination” (p. 17)</p>	<p>→ (page 12) “C. Important Considerations in Interpreting and Applying the Standard”:</p> <p>→ Eliminates text:</p> <ol style="list-style-type: none"> 1. The "significant possibility" standard of proof required to establish a credible fear of persecution or torture must be applied in conjunction with the standard of proof required for the ultimate determination on eligibility for asylum, withholding of removal, or protection under the Convention Against Torture. For instance, in order to establish a credible fear of torture, an applicant must show a "significant possibility" that he or she could establish eligibility for protection under the Convention Against Torture, i.e. a "significant possibility" that it is "more likely than not" that he or she would be tortured if removed to the proposed country of removal. This is a higher standard to meet than for an applicant attempting to establish a "significant possibility" that he or she could establish eligibility for asylum based upon a well-founded fear of persecution on account of a protected characteristic, i.e. a "significant possibility" that he or she could establish a "reasonable possibility" of suffering persecution on account of a protected characteristic if returned to his or her home country. 2. Questions as to how the standard is applied should be considered in light of the nature of the standard as a <i>screening standard</i> to identify persons who could qualify for asylum or protection under the Convention against Torture, including when there is reasonable doubt regarding the outcome of a credible fear determination. 3. In determining whether the alien has a credible fear of persecution or a credible fear of torture, the asylum officer shall consider whether the applicant's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge. 4. Similarly, where there is: <ol style="list-style-type: none"> a. disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue; or, b. the claim otherwise raises an unresolved issue of law; and, c. there is no DHS or Asylum Division policy or guidance on the issue, then generally the interpretation most favorable to the applicant is used when determining whether the applicant meets the credible fear standard.
<p>- Identity: must establish with reasonable degree of certainty. Credible testimony can suffice.</p>	<p>- Identity: must establish with reasonable degree of certainty.</p>	<p>- Identity section is streamlined from 3 paragraphs to 1 (p. 17)</p>	<p>→ (page 13) “D. Identity”:</p> <p>→ Prior text (changes in bold):</p>

	<ul style="list-style-type: none"> - Note added: use info from ICE/CBP to establish identity 	<ul style="list-style-type: none"> - Changed from “with a reasonable degree of certainty” to “credibly establish ...by a preponderance of the evidence” - Eliminates language that “the officer must elicit information in order to establish that there is a significant possibility that the applicant will be able to credibly establish his or her identity in a full asylum or withholding of removal hearing.” (p. 18) - Removes paragraph about eliciting identity information for determining whether to parole an alien. (p. 18) 	<ul style="list-style-type: none"> - The applicant must be able to establish his or her identity by a preponderance of the evidence credibly.
<ul style="list-style-type: none"> - “Significant possibility”: no set definition, but helpful to view as substantial and realistic possibility of success - Includes reminder of low screening standard intent 	<ul style="list-style-type: none"> - “Significant Possibility”: substantial and realistic possibility of success - Includes reminder of low screening standard of intent, but followed by immediate rebuttal and statements implying low threshold need not be applied (as referenced above) - References asylum standard, but does not provide instruction on “reasonable possibility,” nor mention <i>Cardoza-Fonseca</i> 1/10 standard 	<ul style="list-style-type: none"> - No changes. 	
<ul style="list-style-type: none"> - Rules for Ambiguity: Decide in favor of applicant when: <ol style="list-style-type: none"> 1) Circuit Split, OR 2) Unresolved issue of law 	<ul style="list-style-type: none"> Problematic addition to ambiguity rule: Decide in favor of applicant if: <ol style="list-style-type: none"> 1) Circuit split, or 	<ul style="list-style-type: none"> - No changes. 	

	2) Unresolved area of law, AND 3) *There is no DHS or Asylum Division guidance on the issue		
<u>Only in 2006</u> - Consider questions in light of goal of catching <i>all who could</i> qualify - If reasonable doubt: decide in favor of applicant	<u>Added in 2014</u> - New Evidentiary Standard: “must produce sufficiently convincing evidence that establishes the facts of the case”	- No changes.	
	<u>Added in 2014</u> - Must take country of origin information (COI) into consideration - COI for torture must show “evidence of gross, flagrant, or mass violations of human rights”.	- No changes.	
	<u>Added in 2014</u> - New 3-Pronged Test: Testimony must be 1) Credible, 2) Persuasive, and 3) Refer to specific facts	- No changes.	

Credibility

<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
- Standard: “applicant must establish that there is a significant possibility that the assertions underlying his or her claim could be found credible	- Standard: “applicant must establish that there is a significant possibility that the assertions underlying his or her claim could be found credible	- “totality of the circumstances” language replaces “significant possibility...could be found credible” and “substantial and realistic possibility...will be found	→ (page 13) “A. Credibility Standard” → Adds text (changes in bold): - The asylum officer should assess the credibility of the assertions underlying the applicant’s claim to be a refugee entitled to asylum, considering the totality of the circumstances,

<p>in a full asylum or WOR hearing.”</p>	<p>in a full asylum or WOR hearing.”</p>	<p>credible” language (p. 18).</p>	<p>including other statements made by the applicant, evidence of country conditions, State Department reports, and all other relevant facts and evidence, and all relevant factors.”</p> <p>→ Adds Footnote (1) and (2):</p> <p>(1) If the order in <i>Grace v. Whitaker</i>, 344 F. Supp. 3d 96 (D.D.C. 2018). is lifted, then officers must additionally follow the following guidelines:</p> <p>“The asylum officer should also apply the case law of the relevant federal circuit court, together with the applicable precedents of the Attorney General and the BIA. The BIA defers to precedents of the circuit in which the removal proceedings took place. <i>Matter of Anselmo</i>, 20 I. & N. Dec. 25, 31 (BIA 1989), except in certain special situations. See <i>Id.</i>; see also <i>Nat’l Cable Telecommunications Ass’n v. Brand X Internet Servs.</i>, 545 U.S. 967 (2005). (holding prior judicial constraint of statute trumps agency construction otherwise entitled to Chevron deference only if prior court decision holds that its construction is required by unambiguous terms of statute and leaves no room for agency discretion).”</p> <p>(2) If the order in <i>Grace v. Whitaker</i>, 344 F. Supp. 3d 96 (D.D.C. 2018) is lifted, this policy will no longer apply. Officers will be required to apply the law in the circuit in which the alien is located.</p> <p>→ Prior text (changes in bold) →</p> <p>“The U.S. Supreme Court has held that to properly consider the totality of the circumstances, “the whole picture ... must be taken into account.” The Board of Immigration Appeals (BIA) has interpreted this to include taking into account the whole of the applicant's testimony as well as the individual circumstances of each applicant.” explained that the burden of proof is upon the applicant for asylum to establish that the</p>
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			<p>reasonable person in her circumstances would fear persecution upon return to her home country on account of one of the give grounds specified in the Act. The applicant may satisfy the burden through a combination of credible testimony and the introduction of documentary evidence and background information that supports the claim.”</p>
		<p>- “Evaluating Credibility in a Credible Fear Interview, General Considerations” → removes first paragraph and sentence that used to exist in paragraph b. stating that this is a screening and that the IJ is ultimately the one to make the determination whether an applicant is credible (p. 18).</p> <p>- Removes “relevant to the claim” language and permits reliance on “all information” instead of “all information relevant to the claim” (p. 18).</p> <p>- “General Considerations, paragraph c.” → Replaces the final paragraph from the 2014 plan that confirms that any unresolved questions about credibility should not be the basis of a negative finding as long as there is a significant possibility of a positive credibility finding by an IJ. (pp. 18-19).</p> <p>- “Identifying credibility concerns” → Adds paragraph a. requiring asylum officers to take into account “the same factors considered in evaluating credibility in the affirmative asylum context.” (p.19).</p>	<p>→ (page 14) “B. Evaluating Credibility in a Credible Fear Interview”:</p> <p>→ Prior text “1. General Considerations, paragraph c” (changes in changes in bold):</p> <p>- The applicant's ability or inability to provide detailed descriptions of specific facts the main points of the claim is critical to the credibility evaluation.”</p> <p>→ Eliminates text:</p> <p>- The applicant's willingness and ability to provide those descriptions may be directly related to the asylum officer's skill at placing the applicant at ease and eliciting all the information necessary to make a proper decision. An asylum officer should be cognizant of the fact that an applicant's ability to provide such descriptions may be impacted by the context and nature of the credible fear screening process.”</p> <p>→ Adds text:</p> <p>- An applicant may claim that his or her ability to identify such facts is impacted by the context and nature of the credible fear screenings, but the INA requires the applicant to identify such facts in order to satisfy his or her burden of proof. It is the job of the asylum officer to determine whether that burden has been met.</p> <p>→ Eliminates text:</p> <p>- subsection (a) “Identifying Credibility Concerns” under “2. Properly Identifying and Probing Credibility Concerns During the Credible Fear Interview”</p>

<p>- Duty to consider totality of circumstances and all relevant factors</p>	<p>- Duty to consider totality of circumstances and all relevant factors</p>	<p>- Adds language emphasizing the importance of detail and saying the amount of detail provided by an applicant is a factor that “should be considered in making a credibility determination.” (p. 19).</p> <p>- Replaces language in 2014 that emphasized the “limited scope” of the CF screening interview for making negative credibility findings and language in 2014 that stated negative credibility findings would be “less prevalent” in the CF process. (p. 19).</p> <p>- Removes distinction from 2014 between the asylum context and credible fear context. (see p. 18 of 2014 and p. 19 of 2017).</p>	<p>→ (page 15) Prior text (changes in bold):</p> <p>- The amount of detail provided by an applicant is another factor that should be considered in making a credibility determination. In order to rely on "lack of detail" as a credibility factor, however, asylum officers must pose questions to the applicant regarding the type of detail sought. The INA requires an applicant to identify “specific facts.” That can be done by asking specific, probing questions that seek to elicit specific facts from the applicant.</p>
<p>- Consider demeanor, consistency, plausibility, falsehoods, etc.</p>	<p>- Consider demeanor, consistency, plausibility, falsehoods, etc.</p>	<p>- “Demeanor, candor, responsiveness...” paragraph revised to make it a full credibility determination. Distinction between asylum vs. credible fear contexts also removed. Specifically, the “limited reliability” reference and limited ability to evaluate these factors in the CF context reference were removed. (p. 19).</p>	<p>→ Eliminates text:</p> <p>- While demeanor, candor, responsiveness, and detail provided are to be taken into account in the credible fear context when making a credibility determination, an asylum officer must also take into account cross-cultural factors, effects of trauma, and the nature of expedited removal and the credible fear interview process-including detention, relatively brief and often telephonic interviews, etc.--when evaluating these factors in the credible fear context.</p> <p>- b. <i>Informing the Applicant of the Concern and Giving the Applicant an Opportunity to Explain</i></p> <p>- When credibility concerns present themselves during the course of the credible fear interview, the applicant must be given an opportunity to address and explain them. The asylum officer must follow up on all credibility concerns by making the applicant aware of each portion of the testimony, or his or her conduct, that raises credibility concerns, and the reasons the applicant's credibility is in question. The asylum officer must clearly record in the interview notes the questions used to inform the applicant of any relevant credibility issues, and the applicant's responses to those questions.</p>

<p>- Consider factors that may make applicant appear not credible</p>	<p>- Consider factors that may make applicant appear not credible</p>	<p>- No change.</p>	
<p>- Factors contributing to appearance of lack of credibility: trauma, passage of time, vulnerability, cultural and communication differences, interpretation, unfamiliarity with the phone system or interpreter, etc.</p>	<p>- Factors contributing to appearance of lack of credibility: trauma, passage of time, vulnerability, cultural and communication differences, interpretation, unfamiliarity with the phone system or interpreter, etc.</p>	<p>- “Assessing Credibility in Credible Fear when Making a Credible Fear Determination” → paragraph 1 revised to replace “significant possibility” language with “totality of the circumstances” language. (p. 20)</p> <p>- Paragraph 2 revised to say “whether the assertions underlying the applicant’s claim are credible” rather than “significant possibility...in a full...hearing.” (p. 20)</p>	<p>→ (page 15) “C. Assessing Credibility in Credible Fear when Making a Credible Fear Determination”</p> <p>→ (paragraph 1) Adds text (changes in bold):</p> <p>- In assessing credibility, the officer must consider the totality of the circumstances and all relevant factors, including any reports or data available to the officer regarding conditions in the country or region regarding which the applicant claims a fear of return. Credibility determinations must be made on a case-by-case basis, requiring the officer to consider the totality of the circumstances provided by the applicant’s testimony and all relevant country conditions information available to the officer.</p> <p>→ Eliminates text:</p> <p>- When considering the totality of the circumstances in determining whether the assertions underlying the applicant's claim are credible, the following factors must be considered as they may impact an applicant's ability to present his or her claim:</p> <ul style="list-style-type: none"> (i) trauma the applicant has endured; (ii) passage of a significant amount of time since the described events occurred; (iii) certain cultural factors, and the challenges inherent in cross-cultural communication; (iv) detention of the applicant; (v) problems between the interpreter and the applicant, including problems resulting from differences in dialect or accent, ethnic or class differences, or other differences that may affect the objectivity of the interpreter or the applicant's comfort level; and (vi) unfamiliarity with speaker phone technology, the use of an interpreter the applicant cannot see, or the use of an interpreter that the applicant does not know personally. <p>→ (paragraph 2) New language:</p> <p>Officers should refer to all relevant country conditions reports made available to USCIS by the Department of State or other intelligence sources to assess whether the applicant’s claims are credible and plausible in the regions in which the applicant claims they have or will occur, as well as to assess whether an applicant could relocate to another area of his or her home country in order to avoid the alleged persecution. If such internal relocation is reasonable, claims that are inconsistent with country conditions reports or are indicative of “boilerplate” language used in credible fear claims by applicants in different proceedings</p>

			<p>might be valid indications of fraud supporting an adverse credibility finding, although the applicant should be given the opportunity to explain. - <i>See Matter of R-K-K-</i>, 26 I&N Dec. 658 (BIA 2015).</p> <p>→ (paragraph 3) Prior text (changes bold): The asylum officer must have followed should follow up on all credibility concerns during the interview by making the applicant aware of each concern, and the reasons the applicant's testimony is in question bases for questioning the applicant's testimony. The officer should give the applicant must have been given an opportunity to address and explain all such concerns during the credible fear interview.</p>
<p>- Applicant must have opportunity to address inconsistencies</p> <p>- Minor/trivial inconsistencies irrelevant; material may lead to denial</p> <p>- Negative credibility finding: - Applicant fails to provide reasonable explanation of inconsistencies - No significant possibility applicant could successfully address before IJ</p>	<p>- Applicant must have opportunity to address inconsistencies</p> <p>- Minor/trivial inconsistencies irrelevant; material may lead to denial</p> <p>- Negative credibility finding: - Applicant fails to provide reasonable explanation of inconsistencies - No significant possibility applicant could successfully address before IJ</p>	<p>- new language for paragraph 4 → 2014 version more explicit that minor concerns are “not sufficient,” again requires a full credibility finding (rather than significant possibility an IJ would find credible), makes it seem like inconsistencies do not have to be material to lead to a negative credibility finding (p. 21).</p>	<p>→ (paragraph 4) Eliminates text → Generally, trivial or minor credibility concerns in and of themselves will not be sufficient to find an applicant not credible. Nonetheless, on occasion such credibility concerns may be sufficient to support a negative credible fear determination considering the totality of the circumstances and all relevant factors. Such concerns should only be the basis of a negative determination if the officer attempted to elicit sufficient testimony, and the concerns were not adequately resolved by the applicant during the credible fear interview.</p> <p>→ (paragraph 4) New language: As recommended by Congress in enacting the REAL ID Act of 2005, in making credibility determinations, asylum officers should “rely on those aspects of demeanor that are indicative of truthfulness or deception... [and] a credibility determination should follow an examination of all relevant circumstances, including the circumstances of the individual applicant.</p>
<p>- Duty to probe inconsistencies with CBP statements taken at border; I-867B not intended to elicit detail</p>	<p>- Duty to probe inconsistencies with CBP statements taken at border; I-867B not intended to elicit detail - Note added: some CBP officers do elicit details, and</p>	<p>- Again replaces “significant possibility” the applicant could be credible language with “totality of the circumstances” the applicant is credible language (p. 21). Takes away reference to IJ decision following a full hearing. Takes away specific reference to considering the</p>	<p>→ (paragraph 5) Prior text (changes in bold): The sworn statement completed by CBP (Form I-867A/B) is not intended, however, to does not always record detailed information about any fear of persecution or torture, or other general information, such as the reason the individual came to the United States. The interview statement is intended to record whether or not the individual has a fear, not the nature or details surrounding that fear. However, in some cases, the asylum officer may find that the CBP officer did, in fact, gather additional information from the applicant</p>

	<p>AO can use to guide questions and probe</p>	<p>applicant’s explanation for inconsistencies with CBP/ICE statements.</p> <p>- Adds 7th Circuit <i>Moab v. Gonzales</i> case reference and quote. (pp. 21-22). Adds additional citations from 1st and 9th circuits (p. 22).</p> <p>- Expands use of <i>Ramsameachire v. Ashcroft</i> from 2nd Circuit. Adds a quote in the main text and replaces the 2014 parenthetical in the citation in the margin with a new parenthetical. Generally, the new language in the text and in the citation seems to encourage a negative credibility finding and reliance upon inconsistencies between CBP/ICE interview statements and the CF interview. Specifically, the 2014 parenthetical that was replaced had language emphasizing the “limitations inherent in the initial interview process.” That language is no longer part of the lesson plan. (p. 22).</p>	<p>regarding the nature of his or her claim. In such cases, the applicant's prior statements can inform the asylum officer's line of questioning in the credible fear interview, and any inconsistencies between these prior statements and the statements being made during the credible fear interview should be probed and assessed in determining the applicant’s credibility.</p> <p>- <i>Matter of J-C-H-F-</i>, 27 I&N Dec. 211 (BIA 2018).</p> <p>→ Eliminates text: “A number of federal courts have cautioned adjudicators to keep in mind the circumstances under which an alien's statement to a CBP official is taken when considering whether an applicant's later testimony is consistent with the earlier statement. For instance, the Seventh Circuit noted, "airport interviews ... are not always reliable indicators of credibility." In addition, the Fourth Circuit identified the different purposes of CBP' s interview for the sworn statement and the asylum process: "the purpose of these [sworn statement) interviews is to collect general identification and background information about the alien. The interviews are not part of the formal asylum process."</p> <p><i>Moab v. Gonzales</i>, 500 F.3d 656, 660 (7th Cir. 2007) (internal citations omitted). <i>Qing Hua Lin v. Holder</i>, 736 F.3d 343, 353 (4th Cir. 2013).</p> <p>Some factors to keep in mind include: 1) whether the questions posed at the port of entry or place of apprehension were designed to elicit the details of an asylum claim, and whether the immigration officer asked relevant follow-up questions; 2) whether the alien was reluctant or afraid to reveal information during the first meeting with U.S. officials because of past abuse; and 3) whether the interview was conducted in a language other than the applicant's native language.</p> <p><i>See, e.g., Balasubramanrim v. INS</i>, 143 F.3d 157 (3d Cir. 1998); <i>Lin Lin Tang v. U.S. Att'y Gen.</i>, 578 F.3d 1270, 1279-80 (11th Cir. 2009); <i>c.f. Ye Jian Xing v. Lynch</i>, 845 F.3d 38, 44-45 (1st Cir. 2017) (while not requiring specifically enumerated factors for examining the reliability of the sworn statement, noting that an interpreter was used and Ye understood the questions asked); <i>Joseph v. Holder</i>, 600 F.3d 1235, 1243 (9th Cir. 2010) (in examining statements in a prior bond hearing, noting, "[w]e have rejected adverse credibility findings that relied on differences between statements a petitioner made during removal proceedings and those made during less formal, routinely unrecorded proceedings.");</p>
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			<p>The Second Circuit has advised: "If, after reviewing the record of the [CBP] interview in light of these factors and any other relevant considerations suggested by the circumstances of the interview, the ... [agency] concludes that the record of the interview and the alien's statements are reliable, then the agency may, in appropriate circumstances, use those statements as a basis for finding the alien's testimony incredible. Conversely, if it appears that either the record of the interview or the alien's statements may not be reliable, then the ... [agency] should not rely solely on the interview in making an adverse credibility determination." <i>Ramsameachire v. Ashcroft</i>, 357 F.3d 169, 179-81 (2d Cir. 2004) (holding that the BIA was entitled to rely on fundamental inconsistencies between the applicant's airport interview statements and his hearing testimony where the applicant was provided with an interpreter, given ample opportunity to explain his fear of persecution in a careful and non-coercive interview, and signed and initialed the typed record of statement).</p> <p>6. All reasonable explanations must be considered when assessing the applicant's credibility. The asylum officer need not credit an unreasonable explanation.</p> <p>If, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the officer finds that the applicant has provided a reasonable explanation, a positive credibility determination may be appropriate when considering the totality of the circumstances and all relevant factors.</p> <p>If, however, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the applicant fails to provide an explanation, or the officer finds that the applicant did not provide a reasonable explanation, a negative credibility determination based upon the totality of the circumstances and all relevant factors will generally be appropriate.</p>
	<p><u>Only in 2014</u> - Removes 2006 statement that clear probability not required - References to "totality of circumstances" and duty to consider "all relevant factors" only emphasized in Credibility portion of 2014 training; emphasized throughout 2006</p>	<p>- "Reasonable explanations" paragraphs → again, "totality of the circumstances" language replaces "significant possibility" language. Again, requires a full credibility finding, rather than emphasizing screening nature of the interview and fact that IJ will do the full credibility finding after full hearing. (p. 23).</p>	<p>→ Adds Footnote (3): If the order in <i>Grace v. Whitaker</i>, 344 F.Supp, 3d 96 (D.D.C. 2018), is lifted, then officers must additionally follow the following guidance: A number of federal courts have cautioned adjudicators to keep in mind the circumstances under which an alien's statement to a CBP official is taken when considering whether an applicant's later testimony is consistent with the earlier statement. For instance, the Seventh Circuit noted that "'airport interviews... are not always reliable indicators of credibility.'" In addition, the Fourth Circuit identified the different purposes of CBP's interview for the sworn statement and the asylum process" "the purpose of these [sworn statement] interviews is to</p>

			<p>collect general identification and background information about the alien. The interviews are not part of the formal asylum process. <i>See, e.g. Balasubramanian v. INS</i>, 143 F.3d 157 (3d Cir. 1998); <i>Lin Lin Tang v. U.S. Att’y Gen.</i>, 578 F.3d 1270, 1279-80 (11th Cir. 2009); cf. <i>Ye Jian Xing v. Lynch</i>, 845 F.3d 28, 44-45 (1st Cir. 2017) (while not requiring specifically enumerated factors for examining the reliability of the sworn statement, noting that an interpreter was used and Ye understood the questions asked); <i>Joseph v. Holder</i>, 600 F.3d 1235, 1243 (9th Cir. 2010) (in examining statements in a prior bond hearing, noting, “[w]e have rejected adverse credibility findings that relied on differences between statements a petitioner made during removal proceedings and those made during less formal, routinely unrecorded proceedings.”).</p> <p>Some factors to keep in mind include: 1) whether the questions posed at the port of entry or place of apprehension were designed to elicit the details of an asylum claim, and whether the immigration officer asked relevant follow up questions; 2) whether the alien was reluctant or afraid to reveal information during the first meeting with U.S. officials because of past abuse; and 3) whether the interview was conducted in a language other than the applicant's native language. <i>Ramsameachire v. Ashcroft</i>, 357 F.3d 169, 179-81 (2d Cir. 2004) (holding that the BIA was entitled to rely on fundamental inconsistencies between the applicant's airport interview statements and his hearing testimony where the applicant was provided with an interpreter, given ample opportunity to explain his fear of persecution in a careful and non-coercive interview, and signed and initialed the typed record of statement).</p> <p>The Second Circuit has advised: "If, after reviewing the record of the [CBP] interview in light of these factors and any other relevant considerations suggested by the circumstances of the interview, the... [agency] concludes that the record of the interview and the alien's statements are reliable, then the agency may, in appropriate circumstances, use those statements as a basis for finding the alien's testimony incredible. Conversely, if it appears that either the record of the interview or the alien's statements may not be reliable, then the... [agency] should not rely solely on the interview in making an adverse credibility determination."</p> <p>All reasonable explanations must be considered when assessing the applicant's credibility. The asylum officer need not credit an unreasonable explanation.</p> <p>If, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the officer finds that the applicant has provided a reasonable explanation, for inconsistencies between prior statements and statements made at the credible fear interview, those inconsistencies alone need not preclude a positive credibility determination when considering the totality of the circumstances and all relevant factors.</p>
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			<p>If, however, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the applicant fails to provide an explanation for such inconsistencies, or the officer finds that the applicant did not provide a reasonable explanation, a negative credibility determination based upon the totality of the circumstances and all relevant factors will generally be appropriate.”</p>
			<p>→ (page 17) “D. Documenting a Credibility Determination”:</p> <p>→ (paragraph 2) Adds text (changes in bold):</p> <ul style="list-style-type: none"> - The officer must specify in the written case analysis the basis for the negative credibility finding, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer’s determination of whether, in light of such facts, the alien has established a credible fear. In the case of a positive credibility determination, the officer should not any specific portions of testimony that contributed to the officer’s overall credibility determination, including specificity of the presentation, consistency with corroborating evidence submitted or country conditions reports made available and any other factors about the applicant’s narrative, demeanor, or presentation that weighed in favor of a positive credibility determination. <p>→ (paragraph 3) changes (changes in bold):</p> <p>“If information that impugns the applicant’s testimony becomes available after the interview but prior to serving the credible fear determination, a follow-up interview must should be scheduled to confront the applicant with the derogatory information and to provide the applicant with an opportunity to address the adverse information.</p> <p>→ Eliminates text:</p> <ul style="list-style-type: none"> - Unresolved credibility issues should not form the basis of a negative credibility determination.
Establishing a Credible Fear of Persecution			
<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
<p>General Considerations</p> <ul style="list-style-type: none"> - Persecution must be “on account of” 1 of 5 protected grounds, and - Protected ground must be at least one central reason 	<p>Mostly same general considerations, but vastly expands other sections. Adds sub-section on “Motivation”</p>	<p>- No changes.</p>	<p>→ (page 18) “General Consideration in Credible Fear”:</p> <p>→ (paragraph 1) Adds text:</p> <p>... or withholding or removal under section 241(b)(3) of the Act or deferral of removal, if the applicant subject to the mandatory denial of withholding of removal.</p>

	<ul style="list-style-type: none"> - Persecution must be “on account of” 1/5 protected grounds - Protected ground must be at least one central reason 		<p>→ (paragraph 2) Adds text (changes in bold):</p> <ul style="list-style-type: none"> - In general, a finding that (1) there is a significant possibility – that is, a substantial and realistic possibility based on more than significant evidence – that the applicant experienced past persecution on account of a protected characteristic, (2) the conditions that gave rise to such persecution continue to exist in the applicant’s home country, and (3) the applicant could not avoid such persecution by relocating within his or her home country, is are sufficient to satisfy the credible fear standard. This is because the applicant in such a case has shown a significant possibility of establishing that he or she is a refugee under section 208 of the Act and a full asylum hearing provides the appropriate venue to evaluate whether or not the applicant merits a favorable exercise of discretion to grant asylum.
<ul style="list-style-type: none"> - Govt. unwilling or unable to control 	<ul style="list-style-type: none"> - Persecutor must either be government agent, OR non-govt. agent but govt. is unwilling or unable to control - Inability to control not required for whole country; just locale of persecution - Evidence required of attempt to seek police protection, or must provide reasonable explanation why could not 	<ul style="list-style-type: none"> - No changes. 	<p>→ (paragraph 3) adds text (changes in bold):</p> <ul style="list-style-type: none"> - However, if there is is evidence so substantial that there is no does not establish a significant possibility of future persecution, or other serious harm (italics eliminated) or that there are no compelling reasons to grant asylum based on for being unwilling or unable to return to the applicant’s home country given the severity of the past persecution, or reasons why internal relocation is not possible, a negative credible fear determination may be appropriate.”
<ul style="list-style-type: none"> - Provides examples of serious harm - Violations of core human rights (genocide, slavery, torture, detention, sexual violence) - Cumulative acts of discrimination or harassment → consequences of a substantially prejudicial nature (restrictions on right to earn livelihood, education, privacy, 	<ul style="list-style-type: none"> - Vastly expands list of types of harm and level of analysis required: - no serious injury required, but physical harm relevant - serious threats - violation of core human rights (AE note: no explanation) - Cumulative acts of discrimination or harassment → consequences of a substantially prejudicial nature - Brief detention for legitimate law enforcement reasons is not 	<ul style="list-style-type: none"> - No changes. 	<p>→ (paragraph 4) adds text to end:</p> <p>An applicant establishes that he or she has a well-founded fear of persecution if a reasonable person in the applicant’s circumstances would fear persecution upon return to his or her country of origin.</p> <p>→ Adds Footnote (4):</p> <ul style="list-style-type: none"> - Only aliens who have been found to have suffered past persecution are eligible for a grant of asylum based on “other serious harm.” See 8 C.F.R. § 208.13(b)(1)(iii). If the alien demonstrates past persecution, he or she can be granted asylum if: 1) the applicant has also demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of past persecution or if (2) the applicant has established that there is a reasonable possibility that he or she has suffered past persecution and either of the conditions described above exist, the alien could establish a credible fear of persecution.

<p> dwellings, enforced inactivity, passport denial, surveillance, pressure to be informant, property confiscation, illegitimate arrests/detention - Other types of harm or physical abuse: economic, psychological, forced abortion </p>	<p> persecution, but mistreatment in detention may - Economic harm: must be 1) deliberate 2) severe - Psychological harm- personal and emotional factors relevant </p>		
<p> Past Harm - Significant possibility harm amounted to persecution - Generally, past harm is sufficient - Harm must be serious, identifiable, and assessed for individual - Negative finding if - No possibility of future harm, or - No reason to grant based on severity of past harm </p>	<p> Past Harm - Significant possibility harm amounted to persecution - Generally, past harm is sufficient - Negative finding if: - No possibility of past harm, or - No reason to grant based on severity of past harm </p>	<p>- No changes.</p>	<p> → (page 19) “B. Past Persecution/Well-Founded Fear of Future Persecution”: → <u>Order Change in 2019 Plan</u></p> <p> → 2017 plan separates “B. Past Persecution” and “C. Well-Founded Fear of Persecution” in 2 sections → → B. Past Persecution: (1) Severity of Harm (2) Motivation (3) Persecutor → C. Well-Founded Fear of Persecution: (3) The Mogharrabi Test (4) Pattern or Practice (5) Persecution of Individuals Closely Related to the Applicant (6) Threats Without Harm (7) Applicant Remains in Country After Threats or Harm (8) Return to Country of Persecution (9) Internal Relocation</p> <p> → 2019 plan combines sections → → B. Past Persecution/Well-Founded Fear of Future Persecution”: (1) Elements Required to Establish a Credible Fear (2) Severity of Harm (3) Future Fear (Well-Founded Fear) (4) Motivation (5) Persecutor (6) Applicant Did Not Remain in </p>

			<p>Country after Threats or Harm (7) Applicant Has Not Acted Inconsistent with Subjective Fear of Persecution (8) Internal Relocation</p> <p>→ (paragraph 1) Adds text: <u>1. Elements Required to Establish a Credible Fear:</u> In order to establish a credible fear of persecution, the applicant must establish each one of the elements below, to the satisfaction of the asylum officer. If the applicant is not able to establish all of the elements, the applicant must receive a negative credible fear determination.</p> <p>→ (paragraph 2) <u>2. Severity of Harm:</u></p> <p>→ Eliminates text:</p> <p>a. There is no requirement that an individual suffer serious injuries to be found to have suffered persecution. However, the presence or absence of physical harm is relevant in determining whether the harm suffered by the applicant rises to the level of persecution.</p> <p>b. Serious threats made against an applicant may constitute persecution even if the applicant was never physically harmed.</p> <p>c. Violations of "core" or "fundamental" human rights, prohibited by international law, may constitute harm amounting to persecution.</p> <p>d. While less preferential treatment and other forms of discrimination and harassment generally are not considered persecution, discrimination or harassment may amount to persecution if the adverse practices accumulate or increase in severity to the extent that it leads to consequences of a substantially prejudicial nature. Asylum officers should evaluate the entire scope of harm experienced by the applicant to determine if he or she was persecuted, taking into account the individual circumstances of each case.</p> <p>e. Generally, a brief detention, for legitimate law enforcement reasons, without mistreatment, will not constitute persecution. Prolonged detention is a deprivation of liberty, which may constitute a violation of a fundamental human right and amount to persecution. Evidence of mistreatment during detention also may establish persecution.</p> <p>f. To rise to the level of persecution, economic harm must be deliberately imposed and severe.</p> <p>g. Psychological harm alone may rise to the level of persecution. Evidence of the applicant's psychological and emotional characteristics, such as the applicant's age or trauma suffered as</p>
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			<p>a result of past harm, are relevant to determining whether psychological harm amounts to persecution.</p> <p>h. Rape and other severe forms of sexual harm constitute harm amounting to persecution, as they are forms of serious physical harm.</p> <p>i. Harm to an applicant's family member or another third party may constitute persecution of the applicant where the harm is serious enough to amount to persecution, and also where the persecutor's motivation in harming the third party is to act against the applicant.</p>
<p>Nexus</p> <ul style="list-style-type: none"> - Significant possibility that possession of at least one protected ground is at least one central reason for persecution - AO duty to explore all nexus possibilities - Nexus must be identifiable and articulable - Evidence on nexus direct or circumstantial 	<p>“Motivation”</p> <ul style="list-style-type: none"> - Significant possibility applicant will be able to establish persecutor motivated on account of protected ground, must be at least one central reason. - Nexus: 1) possession of protected ground 2) “on account of” - Punitive intent not required - AO duty to explore all nexus possibilities - Applicant: BOP to establish nexus between harm and protected ground AO: affirmative duty to elicit all info on motive - Evidence on motive direct or circumstantial 	<p>- No changes.</p>	<p>→ (page 21) (paragraph 4)</p> <p><u>4. Motivation</u></p> <p>→ Eliminates text:</p> <p>b. A “punitive” or “malignant” intent is not required for harm to constitute persecution. Persecution can consist of objectively serious harm or suffering that was inflicted because of a characteristic (or perceived characteristic) of the victim, regardless of whether the persecutor intended the victim to experience the harm as harm.</p> <p>c. The applicant does not bear the burden of establishing the persecutor's exact motivation. For cases where no nexus to a protected ground is immediately apparent, the asylum officer in credible fear interviews should ask questions related to all five grounds to ensure that no nexus issues are overlooked.</p> <p>d. Although the applicant bears the burden of proof to establish a nexus between the harm and the protected ground, asylum officers have an affirmative duty to elicit all information relevant to the nexus determination. Evidence of motive can be either direct or circumstantial. Reasonable inferences regarding the motivations of persecutors should be made, taking into consideration the culture and patterns of persecution within the applicant's country of origin and any relevant country of origin information, especially if the applicant is having difficulty answering questions regarding motivation.</p> <p>e. There is no requirement that the persecutor be motivated only by the protected belief or characteristic of the applicant. As long as there is a significant possibility that at least one central reason motivating the persecutor is the applicant's possession or perceived possession of a protected characteristic, the applicant may establish the harm is "on account of" a protected characteristic in the credible fear context.”</p> <p>→ Adds text Motivation (b):</p> <ul style="list-style-type: none"> - There must be a significant possibility that at least one reason motivating the persecutor is the applicant’s possession or perceived possession of a protected characteristic.

			<p>→ Adds Footnote (5): If the injunction in <i>Grace v. Whitaker</i>, 344 F. Supp. 3d 96 (D.D.C. 2018), is lifted, then officers must instead follow the following guidance: There must be a significant possibility that at least <i>one central</i> reason motivating the persecutor is the applicant’s possession or perceived possession of a protected characteristic. In the Ninth Circuit, the alien need only establish a significant possibility that at least <i>a</i> reason motivating the persecutor is the applicant’s possession or perceived possession of a protected characteristic. <i>Barajas-Romero v. Lynch</i>, 846 F.3d 351 (9th Cir. 2017).</p>
<p>- Internal relocation/internal flight alternative (IFA) is generally <u>not</u> relevant when claim is based on past persecution - Says nothing about IFA in future harm analysis</p>	<p><u>2014 adds IFA analysis</u> (to WFF of future harm) - If government is persecutor, no IFA analysis - But, presumption rebuttable by preponderance that IFA possible and reasonable - If persecutor is non-government actor: significant possibility applicant can show no IFA possibility - IFA Determination: Must be: - Possible (safe) - Reasonable under all circumstances - social/cultural constraints, geographic barriers, administrative/judicial/economic infrastructure making it difficult for applicant to live in another part of country, civil strife, danger of other serious harm not amounting to persecution</p>	<p>- No changes.</p>	<p>→ Order change from 2017 plan → “Internal Relocation” moved down to (paragraph 8) of “B. Past Persecution/Well-Founded Fear of Future Persecution”</p> <p>→ (page 24) (paragraph 8) → <u>8. Internal Relocation:</u></p> <p>→ (paragraph 8(a)) Adds text: Asylum officers must consult all available and salient information, including information in the objective conditions set forth in Department of State country reports.</p> <p>→ Prior text (changes in bold): b. If the persecutor is a non-governmental entity, there must be a significant possibility that the applicant can demonstrate that there is no reasonable internal relocation option cannot reasonably internally relocate within his or her country. In cases in which the persecutor is a non-governmental entity and the applicant has not established past persecution, the applicant has the burden of establishing that internal relocation is not reasonable.</p> <p>→ (paragraph c (ii)) Adds text (changes in bold): (ii). Determine whether an applicant’s relocations, under all circumstances, would be reasonable. Some factors that could be considered—but are in no way controlling or determinative—are listed in 8 C.F.R. § 208.13(b)(3).</p> <p>→ Eliminates text: d. In determining the reasonableness of internal relocation in relation to a well-founded fear claim, asylum officers should consider the following factors:</p>

			<p>(i) Whether the applicant would face other serious harm that may not be inflicted on account of one of the five protected grounds in the refugee definition, but is so serious that it equals the severity of persecution;</p> <p>(ii) Any ongoing civil strife such as a civil war occurring in parts of the country;</p> <p>(iii) Administrative, economic, or judicial infrastructure that may make it very difficult for an individual to live in another part of the country;</p> <p>(iv) Geographical limitations that could present barriers to accessing a safe part of a country or where an individual would have difficulty surviving due to the geography;</p> <p>(v) Social and cultural constraints such as age, gender, health, and social and familial ties or whether the applicant possess a characteristic, such as a particular language or a unique physical appearance, that would readily distinguish the applicant from the general population and affect his or her safety in the new location; and</p> <p>(vi) any other factors specific to the case that would make it unreasonable for the applicant to relocate should be considered. There is no requirement that an applicant first attempt to relocate in his or her country before flight. However, the fact that an applicant lived safely in another part of his or her country for a significant period of time before leaving the country may be evidence that the threat of persecution does not exist countrywide, and that the applicant can reasonably relocate within the country to avoid future persecution.</p>
<p>- Other factors irrelevant to past harm:</p> <ul style="list-style-type: none"> - Risk of future harm - Changed circumstances 	<p>- Missing 2006 paragraphs stating</p> <ul style="list-style-type: none"> - Risk of future harm (in past persecution analysis) - Changed circumstances are irrelevant to past harm analysis 	<p>- No changes.</p>	
<p>* Note to be aware of novel legal issues like PSG</p>	<p><u>Particular Social Group:</u> <u>Significant Changes</u></p> <ul style="list-style-type: none"> - If no precedent on point when determining PSG, must apply BIA guidelines for PSG found in <i>Matter of M-E-V-G- Matter of W-G-R-</i>: - Common, immutable characteristic - Particularity - Social distinction 	<p>- Removed reference and citation to circuit court cases that have rejected the Board of Immigration Appeals' application of social distinction as a requirement for establishing a viable particular social group. (p. 28 in 2017 vs. p. 26 in 2014).</p>	<p>→ (page 22) under (4) Motivation →</p> <p><u>(c) Particular Social Groups</u></p> <p>→ Eliminates text:</p> <p>f. Particular Social Groups: The area of law surrounding particular social groups is evolving rapidly, and it is important for asylum officers to be informed about current DHS and Asylum Division guidance, as well as current case law and regulatory changes. To determine whether the applicant belongs to a viable particular social group where there are no precedent decisions on point, asylum officers must analyze the facts using the BIA test for evaluating whether a group meets the definition of a particular social group:</p>

			<p>(i) First, the group must comprise individuals who share a common, immutable characteristic, which is either a characteristic that members cannot change or is a characteristic that is so fundamental to the member's identity or conscience that he or she should not be required to change it.</p> <p>(ii) Second, the group must be defined with particularity; it "must be defined by characteristics that provide a clear benchmark for determining who falls within the group."</p> <p>(iii) Third, the group must be socially distinct within the society in question. Social distinction involves examining whether "those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it." Social distinction relates to society's, not the persecutor's, though the persecutor's perceptions may be relevant to social distinction.</p> <p>→ Replaces text: To determine whether the applicant belongs to a legally viable particular social group where there are no precedent decision on point, asylum officers must analyze the facts using the immutability requirement described in <i>Matter of Acosta</i>. The group must comprise individuals who share a common, immutable characteristic, which is either a characteristic that members cannot change or is a characteristic that is so fundamental to the member's identity or conscience that he or she should not be required to change it.</p> <p>→ Adds Footnote (6): If the injunction in <i>Grace v. Whitaker</i>, 344 F. Supp. 3d 96 (D.D.C. 2018) is lifted, then officers must instead follow the following guidance: To determine whether the applicant belongs to a viable particular social group where there are no precedent decisions on point, asylum officers must analyze the facts using the BIA test for evaluating whether a group meets the definition of a particular social group, which is the immutability requirement described in <i>Matter of Acosta</i>: First, the group must comprise individuals who share a common, immutable characteristic, which is either a characteristic that members cannot change or is a characteristic that is so fundamental to the member's identity or conscience that he or she should not be required to change it. Second, the group must be defined with particularity; it "must be defined by characteristics that provide a clear benchmark for determining who falls within the group." A group is particular if the "group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons." A</p>
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<p>Well-founded fear of future harm</p> <ul style="list-style-type: none"> - When no evidence of past harm, evaluate for future harm - SOP: Significant possibility that applicant will be able to show reasonable possibility that he will be persecuted on account of a protected characteristic. 	<p>Well-Founded Fear of Future Persecution</p> <ul style="list-style-type: none"> - When no evidence of past harm, evaluate for future harm - SOP: Significant possibility that applicant will be able to show reasonable possibility that he will be persecuted on account of a protected characteristic. 	<p>- No changes.</p>	<p>→ (page 19) (paragraph 3) →</p> <p><u>3. Future Fear/Well-Founded Fear:</u></p> <p>→ Eliminates text:</p> <p>I. When an applicant does not claim to have suffered any past harm or where the evidence is insufficient to establish a significant possibility of past persecution on account of a protected characteristic under section 101 (a)(42)(A) of the Act, the asylum officer must determine whether there is a significant possibility the applicant could establish a well-founded fear of persecution under section 208 of the Act.</p> <p>2. To establish a well-founded fear of persecution on account of a protected characteristic, an applicant must show that he or she has: 1) a subjective fear of persecution; and 2) that the fear has an objective basis.</p> <p>a. The applicant satisfies the subjective element if he or she credibly articulates a genuine fear of return. Fear has been defined as an apprehension or awareness of danger.</p> <p>b. The applicant will meet the credible fear standard based on a fear of future harm if there is a significant possibility that he or she could establish that there is a reasonable possibility that he or she will be persecuted on account of a protected ground upon return to his or her country of origin.</p> <p>3. The <i>Mogharrabi</i> Test: <i>Matter of Mogharrabi</i> lays out a four-part test for determining well-founded fear. To establish a credible fear of persecution on account of a protected characteristic based on future harm, there must be a significant possibility that the applicant can establish each of the following elements:</p> <p>a. <i>Possession</i> (or imputed possession of a protected characteristic)</p> <p>(i) The applicant must possess, or be believed to possess, a protected characteristic that the persecutor seeks to overcome. The BIA later modified this definition and explicitly</p>

			<p>recognized that a "punitive" or "malignant" intent is not required for harm to constitute persecution. The BIA concluded that persecution can consist of objectively serious harm or suffering that is inflicted because of a characteristic (or perceived characteristic) of the victim, regardless of whether the persecutor intends the victim to experience the harm as harm.</p> <p><i>(ii)</i> This analysis requires officers to determine: (1) whether the applicant possesses or is perceived to possess a protected characteristic; and (2) whether the persecution or feared persecution is on account of that protected characteristic.</p> <p><i>(iii)</i> For cases where no nexus to a protected ground is immediately apparent, the asylum officer in credible fear interviews must ask questions related to all five grounds to ensure that no nexus issues are overlooked.</p> <p><i>(iv)</i> Asylum officers have an affirmative duty to elicit all information relevant to the nexus determination. Officers should make reasonable inferences, keeping in mind the difficulty, in many cases, of establishing with precision a persecutor's motives.</p> <p><i>(v)</i> To determine whether the applicant belongs to a viable particular social group where there are no precedent decisions on point, asylum officers must analyze the facts using the BIA test for evaluating whether a group meets the definition of a particular social group.</p> <p>b. <i>Awareness</i> (the persecutor is aware or could become aware the applicant possesses the characteristic)</p> <p><i>(i)</i> Relevant lines of inquiry include: how someone would know or recognize that the applicant had the protected characteristic and how the persecutor would know that the applicant had returned to his or her country.</p> <p><i>(ii)</i> The applicant is not required to hide his or her possession of a protected characteristic in order to avoid awareness.</p> <p>c. <i>Capability</i> (the persecutor has the capability to persecute the applicant)</p> <p><i>(i)</i> If the persecutor is a governmental entity, asylum officers should consider the extent of the government's power or authority and whether the applicant can seek protection from another government entity within the country.</p> <p><i>(ii)</i> If the persecutor is a non-governmental entity, relevant factors include: the extent to which the government is able or willing to control the entity, whether the government is able to or would want to protect the applicant; whether the applicant reported the non-governmental actor to the police; and whether the police or government could or would offer any protection to the applicant.</p> <p><i>(iii)</i> The extent to which the persecutor has the ability to enforce his or her will throughout the country is also relevant when evaluating whether the persecutor is capable of persecuting the applicant.</p>
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- Duty to elicit info on 4 prongs of <i>Mogharrabi</i> test for well-foundedness:	Greatly expands analysis required in 4-pronged <i>Mogharrabi</i> WFF Test	- No changes.	→ (page 22) (paragraph 5) → <u>5. Persecutor:</u>

<ul style="list-style-type: none"> - Possession - Awareness, - Capability, - Inclination 	<ul style="list-style-type: none"> - Possession of protected characteristic persecutor seeks to overcome <ul style="list-style-type: none"> - Actual or imputed - Malignant intent not req'd - Persecutor's awareness of protected characteristic <ul style="list-style-type: none"> - Instructs proper inquiry is: how would persecutor find out applicant possesses protected ground or applicant returned to country? - Not required to hide protected ground - Persecutor's capability to persecute <ul style="list-style-type: none"> - Requires analysis of govt's authority - Lists factors to analyze if non-govt: <ul style="list-style-type: none"> - If govt controls entity - If govt. wants to protect applicant - If applicant tried to report to police - Does entity control whole country? - Persecutor's inclination to persecute <ul style="list-style-type: none"> - Lists factors: previous threats, similarly situated people, time 		<p>→ Eliminates text:</p> <p>a. Evidence that the government is unwilling or unable to control the persecutor could include a failure to investigate reported acts of violence, a refusal to make a report of acts of violence or harassment, closing investigations on bases clearly not supported by the circumstances of the case, statements indicating an unwillingness to protect certain victims of crimes, and evidence that other similar allegations of violence go uninvestigated.</p> <p>→ Prior Text (changes in bold):</p> <p>b. Asylum officers must recognize that no government can guarantee the safety of each of its citizens or control all potential persecutors at all times. It is not sufficient for an applicant to assert that the government lacks sufficient resources to address criminal activity. Rather the government must have abdicated its responsibility to control persecution. A determination of whether a government is unable to control the entity that harmed the applicant requires evaluation of country of origin information and the applicant's circumstances. For example, a government in the midst of a civil war or one that is unable to exercise its authority over portions of the country might be unable to control the persecutor in areas of the country where its influence does not extend. Asylum officers must consult all available and salient information, including the objective country conditions set forth in Department of State country reports. In order to establish a significant possibility of past persecution, the applicant is not required to demonstrate that the government was unable or unwilling to control the persecution on a nationwide basis. The applicant may meet his or her burden with evidence that the government was unable or unwilling to control the persecution in the specific locale where the applicant was persecuted to which the applicant was subject.</p> <p>→ Eliminates text:</p> <p>c. To demonstrate that the government is unable or unwilling to protect an applicant, the applicant must show that he or she sought the protection of the government, or provide a reasonable explanation as to why he or she did not seek that protection. Reasonable explanations for not seeking government protection include evidence that the government has shown itself unable or unwilling to act in similar situations or that the applicant would have increased his or her risk by affirmatively seeking protection. In determining whether an applicant's failure to seek protection is reasonable, asylum officers should consult and consider country of origin information, in addition to the applicant's testimony.</p>
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	<p>passed from persecution</p> <ul style="list-style-type: none"> - “May” use COI to determine capability/inclination 		
<ul style="list-style-type: none"> - Pattern or practice against similarly situated sufficient; no need to show will be singled out. 	<p>Applicant need not show he would be singled out if can show:</p> <ol style="list-style-type: none"> 1) Pattern/practice against similarly situated 2) The applicant is identified w/the persecuted group 	<ul style="list-style-type: none"> - No changes. 	
	<p><u>Added to 2014 for WFF</u></p> <ul style="list-style-type: none"> - Persecution of individuals close to applicant sufficient - Threats without harm-sufficient if serious and reasonable possibility - If applicant remains in country for length of time after persecution or returns to country, may weaken claim 	<ul style="list-style-type: none"> - No changes. 	<p>→ (page 23) (paragraph 7) →</p> <p><u>7. Applicant Has Not Acted Inconsistent with Subjective Fear of Persecution:</u></p> <p>→ Language changed from “Return to Country of Persecution” in 2017 plan</p> <p>→ Eliminates text:</p> <ul style="list-style-type: none"> - Consideration must be given to the reasons the applicant returned and what happened to the applicant once he or she returned. Return to the country of feared persecution does not necessarily defeat an applicant's claim.
<p>Statelessness</p> <ul style="list-style-type: none"> - No statelessness determination - Determine credible fear of persecution in any country to which applicant could return 	<p>Statelessness</p> <ul style="list-style-type: none"> - No statelessness determinations - Determine credible fear of persecution in any country to which applicant could return 	<ul style="list-style-type: none"> - Language shift → e.g. 2014 says “any country to which the applicant might be returned” and 2017 says “any country of proposed removal.” (p. 35). 	<p>→ (page 25) D. Statelessness/Last Habitual Residence → no change</p>
<p>Dual Citizenship</p> <ul style="list-style-type: none"> - Must establish credible fear in each country 	<p>Multiple Citizenship</p> <ul style="list-style-type: none"> - Must establish credible fear in one country. If can’t establish in all, must refer to IJ. - Also refer to IJ if credible fear in country of firm resettlement. 	<ul style="list-style-type: none"> - Slight language changes → e.g., 2014 says “demonstrates a credible fear with respect to another country” whereas 2017 says “raises a fear with respect to another country” (p. 35). And says “the 	<p>→ (page 25) C. Multiple Citizenship:</p> <p>→ Eliminates text:</p> <p>Although the applicant would not be eligible for asylum unless he or she establishes eligibility with respect to all countries of citizenship or nationality, he or she might be</p>

		<p>country of removal” instead of “firmly resettled” country (p. 35).</p> <p>- If multiple countries, 2014 plan used to say “refer to an IJ for full proceedings”...now 2017 says “memorialize it in the file” in case DHS tries to remove the person.</p>	<p>entitled to withholding of removal with respect to one country and not the others. Therefore, the protection claim must be referred for a full hearing to determine this question.</p>
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Establishing a Credible Fear of Torture

<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
<p>- Standard: significant possibly applicant could establish that it is more likely than not he would be tortured</p> <p>- Gives definition found in CAT</p>	<p>- Standard: significant possibly applicant could establish that it is more likely than not he would be tortured</p> <p>- Gives definition found in CAT</p>	<p>- No changes.</p>	<p>- No changes</p>
<p>- Most elements required by CAT are <u>not</u> relevant for CFI</p> <p>- Relevant for CFI: SOP satisfied when significant possibility that:</p> <ul style="list-style-type: none"> - Credible - Will be intentionally subjected to act that produces serious harm - Government officials - Emphasizes instructions to AO’s: Do NOT take other elements into consideration at CFI level; that is for IJ - Reminder of screening purpose 	<p>Major Change: Deletes section making most elements of CAT irrelevant for CFI, and now requires full screening of all elements under CAT</p> <ul style="list-style-type: none"> • Requirements <ul style="list-style-type: none"> 1) Specific Intent to Harm 2) Severe pain/suffering 3) Public official, or someone acting under instigation, consent, or acquiescence of public official 4) In torturer’s custody or control (new) 5) Excludes pain/suffering arising from lawful sanctions (new) 	<p>- No changes.</p>	<p>→ (page 26) <u>B. General Considerations:</u></p> <p>→ Eliminates text: Because credible fear of torture interviews are employed as "screening mechanisms to quickly identify potentially meritorious claims to protection and to resolve frivolous ones with dispatch," parts of the torture definition that require complex legal and factual analyses may be more appropriately considered in a full hearing before an immigration judge.</p>
<p>Intent</p> <ul style="list-style-type: none"> - Actor intends to take action that would cause harm 	<p>Intent</p> <ul style="list-style-type: none"> - Specific intent to inflict pain or suffering (new req.) 	<p>- No changes.</p>	<p>→ (page 27) <u>C. Specific Intent:</u></p> <p>→ Eliminates text:</p>

<ul style="list-style-type: none"> - Actor need not <i>intend</i> serious harm; just to take action that could result - Specific intent only required in CAT hearing before IJ - Reminder CFI lower standard 	<ul style="list-style-type: none"> - Satisfied: show of specific targeting or intentional singling out 		<p>The specific intent requirement is met when the evidence shows that an applicant may be specifically targeted for punishment or intentionally singled out for harsh treatment that may rise to the level of torture.</p> <p>→ Adds text: Specific intent is “intent to accomplish the precise criminal act that one is later charged with” while “general intent” commonly “takes the form of recklessness... or negligence.” - <i>Matter of J-E-</i>, 23 I&N Dec. 291, 301 (BIA 2002) (citing Black’s Law Dictionary 813-14 (7th ed. 1999).</p>
<p>Serious Harm</p> <ul style="list-style-type: none"> - Not level of “severe pain and suffering” required by CAT, but more than persecution 	<p>Degree of Harm</p> <ul style="list-style-type: none"> - Must be “extreme;” does not include “lesser forms of cruel or inhuman treatment”- - Case-by-case analysis - Consider severity and cumulative effect - Mental harm must be prolonged, in addition to must result from one of following: <ul style="list-style-type: none"> - threats of torture - administration or threats of mind-altering substances, - threat of imminent death, or - threats of any of these elements to another person 	<ul style="list-style-type: none"> - No changes. 	<p>→ (page 27) D. Degree of Harm:</p> <p>→ Prior text (changes bold): Therefore, ertain many forms of harm that may be considered persecution may not be considered severe enough to amount to torture.</p> <p>→ Eliminates text: 3. Any harm must be evaluated on a case-by-case basis to determine whether it constitutes torture. Whether harm constitutes torture often depends on the severity and cumulative effect. → Prior text (changes in bold): 3. c. The credible threat of imminent death; or d. The credible threat that another person will imminently be subject to death, severe physical pain or suffering, or...</p>
	<p>Custody and Control (only in 2014)</p> <ul style="list-style-type: none"> - Applicant must be under Custody and Control of torturer(new req.) - No guidance offered 	<ul style="list-style-type: none"> - No changes. 	
	<p>Does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (only in 2014)</p> <ul style="list-style-type: none"> - But sanctions that defeat object and purpose of Convention are not lawful, 	<ul style="list-style-type: none"> - No changes. 	

	and harm arising from such sanctions may constitute torture.		
Past harm - Generally, past torture sufficient to establish significant possibility of future torture at CFI level	Past Harm - Generally, past torture is sufficient to establish future - But preceded by paragraph stating there is no presumption	- No changes.	→ (page 30) <u>F. "Past Harm"</u> → no changes
Identity of torturer - Significant possibility can establish public official	Identity of Torturer: Public Official - State action not satisfied when public official acts in private capacity - "Public official" broader than just police or government, and can include anyone acting under color of law. - Highly complex analysis required for color of law - Fact intensive - Requires analysis of: - whether officers on duty in uniform, - motivation, - whether officers had access to victim because of their position. - Makes reference to Fifth Circuit's expanded definition of "acting in official capacity" acting under color of law when uses official capacity to further personal objectives. - Acquiescence - Government must instigate, consent, or acquiesce - Official must 1) have awareness, and 2) breach legal duty to intervene	- No changes.	→ (page 28) <u>E. Identity of Torturer:</u> → Eliminates text: 2. Harm by a Public Official a. Generally, in the credible fear context, if there is a significant possibility the applicant can establish that it is more likely than not that he or she was or would be harmed by a public official, the applicant has met the public official requirement for a credible fear of torture. b. The term "public official" is broader than the "government" or "police" and can include any person acting in an official capacity or under color of law. A public official can include any person acting on behalf of a national or local authority. c. In the withholding or deferral of removal setting, when a public official acts in a wholly private capacity, outside any context of governmental authority, the state action element of the torture definition is not satisfied. On this topic, the Second Circuit provided that, "[a]s two of the CAT's drafters have noted, when it is a public official who inflicts severe pain or suffering, <i>it is only in exceptional cases that we can expect to be able to conclude that the acts do not constitute torture by reason of the official acting for purely private reasons.</i> " d. A public official is acting in an official capacity when "he misuses power possessed by virtue of law and made possible only because he was clothed with the authority of law." To establish whether a public official is acting in under the color of law, the applicant must establish a nexus between the public official's authority and the harmful conduct inflicted on the applicant by the public official. Such an inquiry is fact intensive and includes considerations like "whether the officers are on duty and in uniform, the motivation behind the officer's actions and whether the officers had access to the victim because of their positions, among others." The Fifth Circuit also addressed "acting in an official capacity" by positing " [w]e have recognized on numerous occasions that acts

	<ul style="list-style-type: none"> - Requires either knowledge or willful blindness - Consent/Instigation/Acquiescence vs. Unwilling/Unable to Prevent <ul style="list-style-type: none"> - Inability irrelevant - Proper inquiry: Is official with duty to intervene willing to? - Requires awareness or deliberate avoidance - Complex willingness analysis: if some government officials try to intervene, but the government is composed of other members who consent, and the government overall cannot stop the torture, that may meet the standard. 		<p>motivated by an officer's personal objectives are 'under color of law' when the officer uses his official capacity to further those objectives."</p> <p>→ Adds text: The term “public official” can include any person acting on behalf of a national or local authority or any national or local government employee regardless whether the official is acting in their official or personal capacity.</p> <p>→ Adds Footnote (7): If the injunction in <i>Grace v. Whitaker</i>, 344 F. Supp 3d 96 (D.D.C. 2018) is lifted, then officers must instead follow the following guidelines: In the withholding or deferral of removal setting, when a public official acts in a wholly private capacity, outside any context of governmental authority, the state action element of the torture definition may not be satisfied depending on the circuit. On this topic, the Second Circuit provided that, '[a]s two of the CAT's drafters have noted, when it is a public official who inflicts severe pain or suffering, it is only in exceptional cases that we can expect to be able <i>to</i> conclude that the acts do not constitute torture by reason of the official acting for purely private reasons.'" <i>Khousam v. Ashcroft</i>, 361 F.3d 161, 171 (2d Cir. 2004) (emphasis added). Meanwhile, the Ninth Circuit has held that the public official need not be acting on behalf of the government. <i>Barajas-Romero v. Lynch</i>, 846 F. 3d 351 (9th Cir. 2017).</p> <p>→ (page 28) (paragraph 3) → <u>Instigation, Consent, or Acquiescence:</u></p> <p>→ Adds text: Asylum officers must consult all available and salient information, including information in the objective country conditions set forth in Department of State country reports.</p> <p>→ Eliminates text: While circuit courts of appeals are split with regards to the BIA’s “willful acceptance” phrase in favor of the more precise “willful blindness,” for purposes of threshold credible fear screenings, asylum officers must use the willful blindness standard.</p> <p>→ Eliminates text:</p>
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			<p>The willingness in certain levels of a government to combat harm is not necessarily responsive to the question of whether torture would be inflicted with the consent or acquiescence of a public official. In <i>De La Rosa v. Holder</i>, the Second Circuit stated, "[i]n short, it is not clear to this Court why the preventative efforts of some government actors should foreclose the possibility of government acquiescence, as a matter of law, under the CAT. Where a government contains officials that would be complicit in torture, and that government, on the whole, is admittedly incapable of actually preventing that torture, the fact that some officials take action to prevent the torture would seem neither inconsistent with a finding of government acquiescence nor necessarily responsive to the question of whether torture would be 'inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'" Similarly, the Third Circuit has indicated that the fact that the government of Colombia was engaged in war against the FARC did not in itself establish that it could not be consenting or acquiescing to torture by members of the FARC.</p>
<p>Internal Relocation - No internal relocation/IFA analysis in CFI</p>	<p>AO Must Consider Internal Relocation/IFA: New! - CAT: Applicant has burden to show no IFA - Asylum: government has burden to show IFA exists - If persecutor is government official, no IFA analysis necessary</p>	<p>- Language revised from 2014, making it seem like a higher burden for the applicant (although technically saying the same thing). e.g., 2017 "more likely than not he or she would be tortured" instead of 2014 "eligible for withholding or deferral of removal" under CAT. Also e.g., 2017 "in assessing whether there is a significant possibility that he or she is eligible for CAT" instead of 2014 "in credible fear of torture determinations." Stronger language.</p> <p>- Replaces discussion of 9th Circuit case <i>Hasan v. Ashcroft</i> and replaces it with 9th Circuit case <i>Maldonado v. Holder</i>. Removes emphasis of burden</p>	<p>→ (page 30) G. Internal Relocation:</p> <p>→ (paragraph 1) Adds text to end: ...Asylum officers must consult all available and salient information, including the objective country conditions set forth in Department of State country reports.</p> <p>→ (paragraph 2) Adds text: Unlike the persecution context, the regulations implementing CAT do not explicitly reference the need to evaluate the reasonableness of internal relocation. Nonetheless, the regulations provide that "all evidence relevant to the possibility of future torture shall be considered..." Therefore, asylum officers should apply the same reasonableness inquiry articulated in the persecution context to the CAT context. 8 C.F.R. § 208.16(c)(3)(ii) 8 C.F.R. § 208.13(b)(3); <i>See</i> RAOI Training Module, <i>Well Founded Fear</i>.</p> <p>→ Eliminates text: 2. Under the Convention Against Torture, the burden is on the applicant to show, for CAT withholding of removal or deferral of removal, that it is more likely than not that he or she would be tortured, and one of the relevant considerations is the possibility of relocation. In deciding whether the applicant has satisfied his or her burden, the adjudicator must consider all relevant evidence, including but not limited to the possibility of relocation within the country of removal.</p>

		on the applicant to show internal relocation not a possibility (<i>Hasan</i>). Instead notes that all relevant evidence, including the possibility of relocation, should be considered when deciding if the applicant met his/her burden (<i>Maldonado</i>).	3. Credible evidence that the feared torturer is a public official will normally be sufficient evidence that there is no safe internal relocation option in the credible fear context. 4. Unlike the persecution context, the regulations implementing CAT do not explicitly reference the need to evaluate the reasonableness of internal relocation. Nonetheless, the regulations provide that "all evidence of relevant to the possibility of future torture shall be considered ... " Therefore, asylum officers should apply the same reasonableness inquiry articulated in the persecution context to the CAT context.
Bars			
<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
- No analysis of bars - But AO's required to take notes on relevant information	No analysis of bars - But AO's required to take notes on relevant information	- No changes.	→ (page 31) <u>IX. Applicability of Bars to Asylum and Withholding of Removal</u> → no changes
Treatment of Dependents			
<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
- Spouses/children can be attached if they arrived together and wish to be attached	-Spouses/children can be attached if they arrived together and wish to be attached	- No changes.	→ (page 32) <u>X. OTHER ISSUES: A. "Treatment of Dependents"</u> → no changes
Other Issues			
<i>2006 Lesson Plan</i>	<i>2014 Lesson Plan</i>	<i>2017 Lesson Plan</i>	<i>2019 Lesson Plan</i>
	- Section on permitting attorneys/consultants added - Sections removed from 2014 Lesson Plan - Instructions on proper use of COI - Instructions on changed circumstances being irrelevant at CFI stage - 2014 summary excludes instructions and references to the screening function and low threshold	- Updates to the "Summary" at the end to reflect major 2017 changes: 1. Credible Fear Standard of Proof section → Removes paragraph about reasonable doubt meriting a positive CF determination, removes reference to IJ's ability to address any doubts in a full hearing.	→ (page 33) <u>D. No General Presumptions Against Certain Types of Cases:</u> → Adds Text: Each claim must be evaluated on its own merits. Therefore, there is no general presumption against officers recognizing any particular type of fear claim. For example, there is no general rule against claims involving domestic violence and gang-related violence as a basis for membership in a particular social group. Similarly, there is no general rule that proposed particular social groups whose definitions involve an inability to leave a domestic relationship are circular and therefore not cognizable. While a particular social group cannot be defined exclusively by the claimed persecution, each particular social group should be evaluated on its own merits. If the proposed social group definition contains characteristics independent from the feared persecution, the group may be invalid. Analysis as to whether a proposed particular social group is cognizable should take into account the independent characteristics presented in each case.

		<p>2. Credibility Section → new language requiring a full/final credibility determination.</p>	<p>→ Adds text: E. No Need for the Applicant to Formulate or Delineate a Particular Social Group: In evaluating whether the applicant has established a credible fear of persecution, if the claim is based on a particular social group, then the asylum officer cannot require an applicant to formulate or delineate particular social groups. The asylum officer must consider and evaluate possible formulations of particular social groups as part of the officer’s obligation to elicit all relevant information from the applicant in this non-adversarial setting.</p> <p>→ (page 34) <u>XIII. SUMMARY</u> B. “Function of Credible Fear Screening”: → Prior text (changes in bold): The purpose of the credible fear screening process is to identify persons subject to expedited removal who might ultimately be eligible have a significant possibility of ultimately being found eligible for asylum under section 208 of the INA or withholding of removal or deferral of removal under the Convention Against Torture CAT, and to identify and screen out non-meritorious claims.</p> <p>→ (page 34) <u>C. Credible Fear Standard of Proof: Significant Possibility:</u></p> <p>→ Eliminates text: The asylum officer shall consider whether the applicant’s case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.</p> <p>→ Prior text (changes in bold): Where there is disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue; or the claim otherwise raises an unresolved issue of law; and, there is no DHS or Asylum Division policy or guidance on the issue, then generally the interpretation most favorable to the applicant is used when determining whether the applicant meets satisfies the credible fear standard.</p> <p>→ (page 35) <u>E. “Establishing a Credible Fear of Persecution”:</u></p> <p>→ Adds Footnote 8:</p>
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			<p>If the order in <i>Grace v. Whitaker</i>, 344 F. Supp 3d 96 (D.D.C. 2018), is lifted, then officer must instead follow the following guidelines:</p> <p>“The asylum officer should also apply the case law of the relevant federal circuit court, together with the applicable precedents of the Attorney General and the BIA. The BIA defers to precedents of the circuit in which the removal proceedings took place. <i>Matter of Anselmo</i>, 20 I.&N. Dec. 25, 31 (BIA 1989), except in certain special situations, see <i>id.</i>; see also <i>Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.</i>, 545 U.S. 967 (2005) (holding prior judicial construction of statute trumps agency construction otherwise entitled to Chevron deference only if prior court decisions holds that its construction is required by unambiguous terms of statute and leaves no room for agency discretion).”</p> <p>→ Prior text (changes in bold): In general, a finding that there is a significant possibility that the applicant experienced past persecution on account of a protected, characteristic is (2) such conditions continue in the applicant’s home country, and (3) the applicant could not avoid such persecution by relocating within his or her home country are sufficient to satisfy the credible fear standard. However, if the applicant fails to present there is evidence demonstrating that there is a significant possibility of future persecution so substantial that there is no significant possibility of future persecution or other serious harm, or that there are no reasons to grant asylum based on the severity of the past persecution, a negative credible fear determination may be appropriate.</p> <p>→ (page 35) F. “Establishing a Credible Fear of Torture”:</p> <p>→ Eliminates text: Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. However, sanctions that defeat the object and purpose of the Convention are not lawful sanctions. Harm arising out of such sanctions may constitute torture. Credible evidence of past torture is strong evidence in support of a claim for protection based on fear of future torture. For that reason, an applicant who establishes that he or she suffered past torture will establish a credible fear of torture, unless changes in circumstances are so substantial that the applicant has no significant possibility of future torture as a result of the change.</p>
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